

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

OLYMPIA URBAN WATERS LEAGUE
(OUWL),

Petitioner,

v.

CITY OF OLYMPIA, PORT OF OLYMPIA
AND 3RD GEN INVESTMENT GROUP,
LLC,

Respondents.

CASE No. 18-2-0004

ORDER OF DISMISSAL

On July 24, 2018, a Petition for Review (PFR) was filed by the Petitioner, Olympia Urban Waters League (OUWL). The PFR states that OUWL seeks review “of a [City of Olympia] permit to build on property leased by the Port of Olympia to a developer, 3rd Gen Investment Group”.¹

The Growth Management Hearings Board is a creature of the Legislature, without inherent or common-law powers and, as such, may exercise only those powers granted by statute, either expressly or by necessary implication.² A party cannot confer jurisdiction; a party must invoke it. Statutory requirements must be met before jurisdiction is properly invoked.³ To invoke the Board’s jurisdiction to review compliance with the Growth Management Act (Chapter 36.70A RCW), a party with standing must comply with the chapter’s procedural requirements:

a) File a petition for review that includes a detailed statement of issues presented for

¹ Petition for Review at 1.

² *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 558 (1998).

³ *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 319 (2003).

1 resolution by the Board;⁴

2 b) File the petition for review within 60 days after notice of publication by the
3 jurisdiction of the adoption of a comprehensive plan, development regulation, or
4 permanent amendment thereto;⁵ and,

5 c) Appeal the legislative action adopting a comprehensive plan, development
6 regulation, or amendment thereto, and allege that such action is not in compliance
7 with the requirements of the GMA (or Chapter 90.58 RCW (Shorelines Management
8 Act) or Chapter 43.21C RCW (State Environmental Policy Act)).⁶

9 The PFR fails to include the required detailed statement of issues.⁷ The PFR does
10 not allege a specific Growth Management Act (GMA), Shorelines Management Act (SMA),
11 or State Environmental Policy Act (SEPA) violation; in fact, there is no reference to any
12 GMA, SMA, or SEPA statute whatsoever.⁸ Furthermore, the “action” allegedly giving rise to
13 OUWL’s challenge apparently occurred in February 2018. Pursuant to RCW 36.70A.290(2),
14 a PFR must be filed within 60 days after notice of publication by the jurisdiction of adoption
15 of “a comprehensive plan, development regulation, or permanent amendment thereto”.
16 OUWL’s PFR was filed on July 24, 2018, long after the expiration of the 60-day filing
17 requirement, assuming it applied in this instance. Finally, and of significance, the PFR fails
18 to include any reference to final action taken by the City of Olympia regarding the adoption
19 of a comprehensive plan, a development regulation, or an amendment of either. In fact, the
20 specific reference to a challenged action is to a “permit to build on property”.⁹ During a
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23 ⁴ RCW 36.70A.290(1); WAC 242-03-200.

24 ⁵ RCW 36.70A.290(2); WAC 242-03-200 and WAC 242-03-220.

25 ⁶ RCW 36.70A.280(1)(a); The provisions of RCW 36.70A.280(1)(b) -(e) are not relevant; WAC 242-03-200 and
26 WAC 242-03-220.

27 ⁷ RCW 36.70A.290(1) All requests for review to the growth management hearings board shall be initiated by
28 filing a petition that includes a detailed statement of issues presented for resolution by the board. The board
29 shall render written decisions articulating the basis for its holdings.

30 ⁸ The PFR does refer to best available science, critical areas, and the GMA requirement that jurisdictions must
31 “give special consideration to conservation and protection measures necessary to preserve or enhance
32 anadromous fisheries”.

⁹ Challenges of site-specific permits falls within the purview of chapter 36.70C RCW. See RCW 36.70C.020(2)
“Land use decision” means a final determination by a local jurisdiction’s body or officer with the highest level of
authority to make the determination, including those with authority to hear appeals, on:

(a) An application for a project permit or other governmental approval required by law before
real property may be improved, developed, modified, sold, transferred, or used, but excluding
applications for permits or approvals to use, vacate, or transfer streets, parks, and similar

1 discussion with OUWL's representatives during the Prehearing Conference held on August
2 27, 2018, they acknowledged the organization was challenging the issuance of a permit and
3 that the City's action did not involve the adoption of "a comprehensive plan, development
4 regulation, or permanent amendment thereto".¹⁰ The Land Use Petition Act (LUPA)
5 (Chapter 36.70C RCW) governs site-specific land use decisions and the superior courts
6 have exclusive jurisdiction over petitions that challenge site-specific land use decisions.¹¹
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8 Under the facts and circumstances presented to the Board, there is but one
9 conclusion: OUWL has failed to properly invoke the Board's jurisdiction. The Board must
10 dismiss a petition when the Board determines jurisdiction was not properly invoked, since
11 the Board has no power to adjudicate that particular case.¹²

12 The Board finds and concludes as follows: (1) The Petitioner seeks to challenge the
13 issuance of a site-specific permit, (2) there was no final, GMA appealable decision made by
14 the City of Olympia regarding the adoption of a comprehensive plan, a development
15 regulation, or an amendment of either, and (3) the PFR on its face does not meet the GMA's
16 requirements to invoke the Board's jurisdiction to consider a GMA, SMA, or SEPA violation.
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18 Having so held, the Board acknowledges the deeply held concerns expressed by
19 OUWL regarding the restoration and protection of the City of Olympia's urban watersheds.
20 Specifically, it is apparent that its members are knowledgeable and dedicated to the
21 restoration of the Moxlie Creek watershed and its outfall into Budd Inlet's East Bay.
22 Unfortunately for OUWL, the Growth Management Hearings Board lacks jurisdiction to
23 review this site-specific permit approval.
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29 types of public property; excluding applications for legislative approvals such as area-wide
30 rezones and annexations; and excluding applications for business licenses; . . .

31 ¹⁰ Statement of Harvey Branch, President of OUWL.

32 ¹¹ *Spokane County v. Eastern Washington Growth Management Hearings Board*, 160 Wn. App. 274, 282
(2011), review denied, 171 Wn.2d 1034, (2011).

¹² See *Crosby v. Spokane County*, 137 Wn.2d 296, 301 (1999) [If a court lacks jurisdiction over a proceeding,
it "may do nothing other than enter an order of dismissal"]. See also *Griffith v. City of Bellevue*, 130 Wn.2d
189, 196 (1996).

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ORDER

Based on the foregoing, the Petition for Review filed by Olympia Urban Waters League, Case No. 18-2-0004, is hereby dismissed, and this case is closed.

DATED this 7th day of September, 2018.

William Roehl, Presiding Officer

Nina Carter, Board Member

Raymond Paoella, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.¹³

¹³ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.